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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,131	11/12/2003	Susan T. Saladino	502477	6228
23626	7590	04/27/2006	EXAMINER	
LEYDIG VOIT & MAYER, LTD. (ROCKFORD OFFICE) TWO PRUDENTIAL PLAZA, SUITE 4900 180 NORTH STESTON AVENUE CHICAGO, IL 60601-6780			STULII, VERA	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 04/27/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/706,131

Applicant(s)

SALADINO, SUSAN T.

Examiner

Vera Stulii

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152). |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 6, 9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer.

In regard to claim 1 Kramer discloses a method for producing alcohol beverage with dessert food flavoring comprising:

Combining apple cider with apple juice, adding sugar, adding predetermined amount of cinnamon, heating the combined apple cider, apple juice, sugar and cinnamon, and cooling the combination until the temperature under boiling is reached and then after cooling adding grain alcohol. Claim 1 differs from Kramer in at least the units of amounts of various ingredients. It is not clear whether the amounts disclosed by Kramer are different from those specifically recited in claim. Kramer discloses amounts in volume measurements, where as the claim 1 recites them in terms of relative portions (presumably weight portions). In any case, since Kramer discloses all of the cited ingredients, selection of particular relative amounts of said ingredients is seen to would have been an obvious matter of routine determination and result effective variable based on such obvious factors as individual taste. Claim 1 recites the simmering step for up to 3 hours and the cooling step below the boiling temperature. It is not clear how

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these two steps are necessarily related to each other. It is also noted that the recitation "up to three hours" reads on very short period of time, and the recitation "until a temperature of under boiling" is still readable on the very high temperature. With this analysis, Kramer who brings the mixture to a boil and then removes from heat and let cools, inherently reads on the two steps of simmering and cooling. Further in this regard applicant is referred to *In re Levin*, 84USPQ 232 wherein the Court stated on page 234 follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes the coaction or cooperation relationship between the selected ingredients, which produces a new, unexpected and useful function. *In re Benjamin D. White*, 17 C.C.P.A. (Patents) 956, 39 F. 2d 974, 5 USPQ 267; *in re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F. 2d 189, 70 USPQ 221.

Claim 4 recites "if the sugar is dry sugar cane-type sugar" then certain ratio is recited. The phrase "if the sugar is dry sugar cane-type sugar..." does not seem to be a positive recitation. In any case, as noted above the particular proportional amount of the ingredients would have been an obvious routine determination.

In regards to claim 6, which recites a product by process, claim 6 is rejected under the reasons given above (where the process is the same as mentioned in claim 1).

Claim 9 that recites the limitations of claim 4 is rejected for the reasons given in regard to claim 4 above.

In regards to claim 11 which recites an alcoholic substance comprising a sweetened apple cider and juice component, a cinnamon component and a grain alcohol component, which are the same components as disclosed by Kramer, claim 11 is therefore rejected for the reasons given above in view of Kramer. It is noted that Kramer who discloses the amount of alcohol relative to the total liquid in the range recited would therefore provide an alcoholic substance capable of having a reduced after-imbibing effect.

In regards to claim 12, since claim 12 adds specific amounts recited in claim 1, claim 12 is rejected under the reasons given for claim 1.

Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer as applied to claim 1 above, and further in view of Buffalo News (November 20, 1994), Oregonian (November 5, 1991), and Oregonian (October 21, 1997). Claim 2 recites bottling the beverage with cinnamon sticks. Kramer is silent as to what he puts his beverage in. As evident by Buffalo News (November 20, 1994), Oregonian (November 5, 1991), and Oregonian (October 21, 1997), it is well established in the art to bottle beverages during or after they are made and to include the cinnamon sticks. To therefore modify Kramer if necessary and bottle the beverage for it's art recognized and

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applicant's intended function (presumably for storage purposes) would have been obvious.

In regard to claim 7, since claim 7 recites the limitations of claim 2, claim 7 is therefore rejected for the reasons given in regard to claim 2 immediately above.

Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer as applied to claim 1 above, and further in view of Morning Call, Capital Times, and Buffalo News. Claim 3 recites that the beverage is poured over ice cream. Kramer is silent in this regard. However as evident by Morning Call (December 15, 1993), Capital Times (July 24, 1996), and Buffalo News (January 11, 1995), it is conventional in the art to serve ice cream with an alcoholic beverage poured over ice cream to enhance the taste. To therefore modify Kramer and employ his beverage as a topping for ice cream, for it's art recognized and applicant's intended function (to enhance the flavor of ice cream) would have been obvious.

In regard to claim 8, which recites the limitations of claim 3, claim 8 is therefore rejected for the same reasons given in regard to claim 3.

Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer as applied to claim 1 above, and further in view of Kime (US 4,327,115). Claim 5 recites that the apple cider is a "clarified-type apple cider". As evidenced by Kime (US 4,327,115) it is known to clarify apple cider. Since Kramer teaches the use of apple cider whether one chooses to use conventional unclarified apple cider or conventional clarified apple cider would have been an obvious matter of choice and an obvious result effective variable depending on whether one wanted a clarified product or not.

In regard to claim 10, which recites the limitations of claim 5, claim 10 is therefore rejected for the reasons given in regard to claim 5 immediately above.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer as applied to claim 1 above, and further in view of Bevers et al. (US 5,478,591) and Burgum (US 5,273,767).

Claim 13 recites that the alcoholic substance includes a gum-based thickening agent. Kramer is silent in this regard. However, as evidenced by Bevers et al. (US 5,478,591) it is well established in the art to add gum-based thickening agent (for example xanthan) to alcoholic beverage compositions. To therefore modify Kramer and add a gum-based thickening agent for it's art recognized and applicant's intended function such as freezing would have been obvious. It is noted that claim 13 recites that thickening enables the alcoholic substance to be used as a confection topping. This recitation is a statement of intended use. It is only limited to the extent that the beverage composition is capable of being used as a confection topping. However it is already been noted above that alcoholic beverages are known to be used as topping even without thickening agent. Burgum (US 5,273,767) is applied to show that it is well established to add gum-based thickening agents to syrups and toppings.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is TBA. The examiner can normally be reached on 8:00 am-4:30 pm, Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VS

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
4/26/06